

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2004-3
)	
DIRECTOR, DEPARTMENT OF LABOR)	ORDER NO. 92
AND INDUSTRIAL RELATIONS,)	
)	PRETRIAL ORDER
Complainant,)	
)	
vs.)	
)	
CONSTRUCTION HAWAII.COM LLC,)	
)	
Respondent.)	
_____)	

PRETRIAL ORDER

Pursuant to the representations by counsel for the respective parties at an initial conference held by the Hawaii Labor Relations Board (Board) on March 18, 2004, IT IS HEREBY ORDERED THAT:

1. The issues to be determined are:
 - (a) Whether Respondent violated 29 CFR 1926.501(b)(10) as described in Citation 1, Item 1, issued on February 5, 2004?
 - (i) Whether the Respondent knew or should have known about the existence of a hazard and exposure of its employee?
 - (ii) Whether compliance is feasible?
 - (iii) Whether the unpreventable employee misconduct defense is applicable?
 - (iv) Whether the characterization of the violation as "Serious" is appropriate? If not, what is the appropriate characterization?
 - (v) Whether the imposition and amount of the \$1,500 penalty is appropriate? If not, what is the appropriate penalty?
 - (b) Whether Respondent violated 29 CFR 1926.502(d)(8) as described in Citation 1, Item 2, issued on February 5, 2004?

- (i) Whether the Respondent knew or should have known about the existence of a hazard and exposure of its employee?
 - (ii) Whether compliance is feasible?
 - (iii) Whether the unpreventable employee misconduct defense is applicable?
 - (iv) Whether the characterization of the violation as “Serious” is appropriate? If not, what is the appropriate characterization?
 - (v) Whether the imposition and amount of the \$1,500.00 penalty is appropriate? If not, what is the appropriate penalty?
- (c) Whether Respondent violated 29 CFR 1926.503(b)(1) as described in Citation 2, Item 1, issued on February 5, 2004?
 - (i) Whether the cited standard applies to Respondent?
 - (ii) Whether Respondent violated the standard?
 - (iii) Whether the unpreventable employee misconduct defense is applicable?
- 2. Respondent shall file its motion for summary judgment by April 2, 2004. Complainant shall file his response by April 16, 2004. The Board will conduct a hearing on Respondent’s motion on April 26, 2004 at 9:30 a.m. in the Board’s hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.
- 3. Discovery deadlines are:

Live and unnamed witness identification; identification of expert and exchange of reports	May 18, 2004
Discovery cut-off	June 18, 2004
- 4. Trial is scheduled on July 6, 2004 at 9:30 a.m. in the above-referenced hearing room.
- 5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. CONSTRUCTION
HAWAII.COM, LLC
OSH 2004-3
ORDER NO. 92
PRETRIAL ORDER

DATED: Honolulu, Hawaii, March 25, 2004.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


KATHLEEN RACUYA-MARKRICH, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General
Jeffrey S. Harris, Esq.